> "Plant Genetics distinguishes Hogan because stably transformed monocots were nascent technology when the application was filed, unlike the unknown and non-existent amorphous polypropylene glycol in the prior case. In the present case, chimeric antibodies like the amorphous propylene in Hogan, did not even appear for the first time until several months after the 1984 application."

Chiron Corp. at 1328 (emphasis added).

In the present case, applicants are not attempting to claim technology that was non-existent at the time of filing. The first five pages of the specification clearly establish the background to what is claimed. Further, appellants are not seeking to claim what is not set forth in the application as filed.

The Examiner asserts that "the instant case is not one in which the rejection is based upon enabling an unknown, future technology by relying upon past-filing references."

The rejections are certainly based upon non-prior art references! The Examiner has conceded this, by admitting that the list of references cited is not prior art. Further, the Examiner states, without citing authority, that "The post-filing data references provide for permissible knowledge concerning appellants assertion of satisfying the requirements under 35 U.S.C. § 112, first paragraph; at the time of filing the instant application."

The fact that the Examiner says it is permissible does not make it so. Authority for the position has been requested, several times, but the Examiner continues to ignore the request.

It is thus ironic that the Examiner, at the bottom of page 22, then takes appellants to ask for citing non-prior art materials. All these materials do, however, confirm the assertions made in the specification. They are not used to enable it.

Point IV of the Supplemental Examiner's Answer is simply a rehash of prior arguments. No further response is necessary, as is the case for page 24.

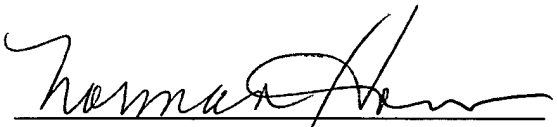
A. CONCLUSION

The Supplemental Examiner's Answer - which does not bear conferee signatures breaks absolutely no new ground, and presents no new arguments. For all of the reasons advanced

previously, as well as in this Supplemental Reply Brief, it is believed that the rejections should be reversed.

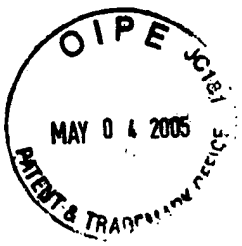
Respectfully submitted,

FULBRIGHT & JAWORSKI, L.L.P.



Norman D. Hanson, Esq.
Registration No. 30,946

666 Fifth Avenue
New York, NY 10103
(212) 318-3000
(212) 318-3400 (fax)



EVIDENTIARY APPENDIX

Attached: Page 4 of Examiner's Answer dated March 11, 2005

As described on page 55, paragraph 1 of the instant specification, the disclosure make clear that the sequences code for **tumor rejection antigen precursors (TRAPS** which, in turn are processed into **tumor rejection antigens (TRAs)**. The evidence points to presentation of TRAs on tumor cells, followed by the development of an immune response and deletion of the cells. TRAPS which are processed into TRAs and the TRAs themselves may be used either alone or in pharmaceutically appropriate compositions as vaccines.

Appellant does not appear to dispute the submitted dictionary definition of "vaccine".

II. Art of Record

In contrast to appellant's assertion that the examiner listed the references as "PRIOR ART", it is noted that Section (9) Art of Record of the Examiner's Answer indicates "Art of Record", not "Prior Art".

While it is acknowledged that the Art of Record lists post-filing date references, appellant is reminded that there is no bar to reliance on post-filing date references, if appropriate.

It is acknowledged that Ding et al., Biochem. Biophys. Commun. 202: 549-555, 1994 (Reference F) was not cited in the rejections set forth in the Examiner's Answer.

This was not an oversight by the examiner. Rather, the reliance upon Ding et al. was not deemed necessary to support the rejections of record, particularly given the number of references already relied upon in the rejections of record.

Further, it was the examiner's intention to focus the evidence provided by the co-inventors in the instant application and in De Plaen et al. (Immunogenetics 40: 360-369, 1994) (Reference E. in the Examiner's Answer) to address the basic information concerning the structure and expression of the genes of the MAGE family.

Such evidence was deemed important in contrasting appellant's assertions that the instant specification does provide for 11 species that meet the key *TRAP characteristics (i)-(iv)* of MAGE, including:

(i) they are proteins that are encoded by naturally occurring, non-mutagenized gene;

(ii) they are characteristic of cancer cells and are not expressed by normal cells (with the exception of testes cells;

(iii) they are encoded by nucleic acid molecules which hybridize to a reference sequence, i.e. one which encodes MAGE-1 (SEQ ID NO: 8), under strictly defined, stringent conditions; and

(iv) they are processed, intracellularly, into TRAs, i.e. peptides, which complex to MHC molecules to form targets for CTLs.

with the evidence itself, particularly with the evidence generated by appellant, concerning the structure, expression and function of the disclosed MAGEs.